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GENERAL COUNSEL
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In the Matter of

Distribution of 1998 and 1999
Cable Royalty Funds

Docket No. 2001-8 CARP CD 98-99

**PROGRAM SUPPLIERS' RESPONSE TO MOTION OF THE PUBLIC TELEVISION
CLAIMANTS TO STRIKE PORTIONS OF PROPOSED FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

Program Suppliers respectfully request that the Copyright Arbitration Royalty Panel in the above captioned case deny the Motion of the Public Television Claimants (PTV) to Strike Portions of Proposed Findings of Fact and Conclusions of Law for the reasons set forth below.

PTV takes issue with Program Suppliers' use of JSC Exhibits 56-RX and 57-RX. JSC Exhibit 56-RX was admitted for impeachment purposes during the cross-examination of Leland Johnson. It shows that Bortz respondents value PTV in nearly the exact same percentage as the percentage of DSEs they pay for the carriage of PTV. As Counsel for JSC noted "56-RX is something comparable to what was done by the Program Suppliers in the '90-'92 proceeding in their Exhibit 8-R." Garret, tr. 9288. The Joint Sports Claimants (JSC) make a similar point in their Rebuttal Findings and Conclusions at ¶ 91 ("The Bortz survey results ... show[] that cable operators value PTV distant signals at a level roughly equal to what they pay for those signals.")

PTV maintains that Program Suppliers "cite JSC Exhibit 56-RX as substantive evidence," which is simply not true. The introductory sentence to the referenced paragraph—"The lack of parity is evident from the Bortz study of Cable Operators"—makes clear that JSC Exhibit 56-RX is being used to impeach Dr. Johnson's claim that parity exists between PTV signals and non-

PTV signals. That is, JSC Exhibit 56-RX goes to the weight to be afforded Dr. Johnson's parity claim, not the accuracy or truthfulness of the data it contains. Having said this, the accuracy of the information on this Exhibit was not questioned during the hearing, and the supportive documents (the surveys) were provided to all parties during the discovery phase of this proceeding. Consequently, there is no justification to strike either the referenced passages, or this exhibit, from Program Suppliers' Proposed Findings of Fact and Conclusions of Law as no party is prejudiced by its inclusion.

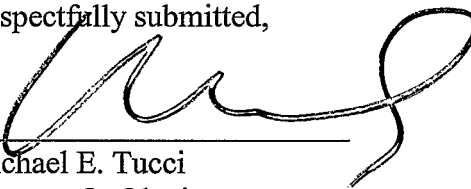
JSC Exhibit 57-RX was admitted during the cross-examination of PTV witness John Wilson for both impeachment purposes and as evidence that the testimony in the exhibit was given in 1991 by Henry Becton, president and general manager of WGBH. PTV asserts that Program Suppliers "rely on JSC Exhibit 57-RX for the truth of its assertions," which is also not true. While it is quite understandable why PTV would want to distance itself from Mr. Becton's remarks in this proceeding, the fact is that he stated that he was "representing the public television community, which [he had] been a part of for twenty years", JSC 57-RX at 1. As the person chosen to "represent the public television community," Mr. Becton clearly and unequivocally testified that public television strongly endorsed "must carry" legislation because "in 1983, close to one hundred public television stations found themselves dropped by cable operators." *Id.* at 3. Program Suppliers don't know if one hundred public television stations were dropped, or 80 or 150. The fact is that Mr. Becton, representing public television, testified to that fact under oath before the Congress of the United States of America. The underlying facts aren't important; the testimony before Congress speaks for itself.

Indeed, Program Suppliers purpose in presenting this exhibit is evident from the following statement in its Proposed Findings: "[W]ithout must-carry legislation, Public

Television recognized that cable system operators would simply refuse to carry PTV." P.S. Proposed Findings at p. 216. That is, Program Suppliers are pointing out that *PTV recognized* that its signals would be dropped, not that 100 stations were actually dropped. Consequently, there is no justification to strike either the referenced passages from Program Suppliers' Proposed Findings of Fact and Conclusions of Law.

For the foregoing reasons, the Panel should deny PTV's motion.

Respectfully submitted,



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September 8, 2003

CERTIFICATE OF SERVICE

I, hereby certify that I have caused a copy of the foregoing document in Docket No. 2001-8 CARP CD 98-99 to be served via hand-delivery or Federal Express as indicated below, this 8th day of September 2003, to the following:

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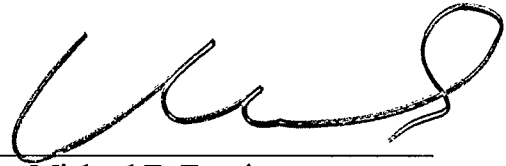
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